

GUIDELINE H-5
(formerly 16-09)

Public Consultation

Legislative Authority:

Environmental Protection Act
Environmental Assessment Act
Environmental Bill of Rights
Ontario Water Resources Act
Pesticides Act

Responsible Director:

Director, Public Affairs and Communications Branch

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SYNOPSIS

Public consultation is a process involving interactive or two-way communication between the Ministry and the public, through which both become informed about different perspectives on issues and proposals, providing the public with the opportunity to influence decisions to be made by the Ministry.

The purpose of this guideline is to:

- (a) clearly define public consultation;
- (b) identify the key players in it;
- (c) describe the public consultation process; and
- (d) provide guidelines for using public consultation.

The Environmental Bill of Rights (EBR) establishes a procedure for notifying the public when environmentally significant decisions are proposed by prescribed government ministries. The *EBR* does not duplicate existing public participation processes for environmentally significant decisions, but establishes the minimum level of public notice and consultation.

1.0 Definitions:

1.1 Modes of Public Involvement:

The Ministry involves the public in decision-making about environmental issues and programs through consultation, participation, mediation and arbitration. To avoid misuse and confusion, it is important to be clear about the differences between these modes of involvement.

Consultation:

The sponsor retains the decision-making authority but consults the public and stakeholders to seek input which may influence and improve the decision

Participation:

The sponsor delegates limited decision-making to a group of stakeholders in order to move toward a consensus on key areas where there is disagreement among the stakeholders

Mediation:

The sponsor facilitates or negotiates agreement among stakeholders about an environmental issue which has a high degree of controversy

Arbitration:

Stakeholders and the sponsor may agree to delegate decision-making authority to a third party in cases where the decision has a high degree of controversy and consensus is unlikely using other modes of involvement

1.2 Consultation Key Players:

The key players in public consultation include the public, stakeholders, the sponsor, the proponent and the approval authority.

Public:

Any person or group other than the Ministry or the consultation sponsor

Stakeholder:

Member of the public who may be directly or indirectly affected by the decision

Sponsor:

A person, group or organization, including the Ministry, which has promulgated a proposal and consults the public to assist in environmental decision-making

Approval authority:

The government body or official Ministry person, committee, board or other decision-making body responsible for making the final environmental decision on the sponsor's application or proposal.

2.0 Statement of Principles:**2.1 Purpose:**

The purpose of this guideline is to:

- (a) clearly define public consultation;
- (b) identify the key players in it;
- (c) describe the public consultation process; and
- (d) provide guidelines for using public consultation.

Effective public consultation is required because it:

- (a) allows the Ministry to take into consideration the public's views and priorities;
- (b) improves the quality and effectiveness of environmental decisions; and
- (c) enhances the public's understanding of environmental issues and activities.

2.2 Scope:

Public consultation may be a part of decision-making processes for four Ministry program areas:

- (a) program development;
- (b) pollution control, abatement and prevention;
- (c) environmental assessments and approvals; and
- (d) environmental master planning.

2.3 Principles:

The following principles will guide the Ministry's public consultation programs:

- (a) The appropriate level of consultation shall be defined early in the program, based on the specific requirements of the situation. The four levels of consultation are:
 - comment,
 - dialogue,
 - agreement, and
 - consensus.
- (b) The Ministry shall carry out public consultation in an objective, open, fair and responsible manner, within reasonable time-frames and with consideration of the cost to all key players.
- (c) Public consultation requirements shall be incorporated into the Ministry's decision-making processes.
- (d) Evaluation of public input shall include consideration of:
 - (i) the relationship to government policy;
 - (ii) local, regional and provincial interests;
 - (iii) technical feasibility; and
 - (iv) potential impacts on stakeholders.
- (e) The objectives and scope of each consultation process shall be made clear at the beginning. This shall include how and when the public will be consulted.
- (f) The public shall be provided with a response outlining how its input was considered in the Ministry's final decision.

3.0 Guidelines for Consulting the Public

Procedure H-5-1: "Public Consultation Guide" (January 1994) is available from the Ministry's Public Information Centre. Its key points are summarized here.

3.1 Levels of public consultation

There are four levels of public consultation. They are listed here in order of the increasing degree of interaction required.

- (a) comment: when the sponsor is seeking public input only;
- (b) dialogue: when the goal of the consultation is to provide a forum for identifying and discussing issues, but not necessarily resolving them;
- (c) agreement: when the consultation process is used to identify common ground among stakeholders and to isolate unresolved issues; and
- (d) consensus: when the consultation is used to resolve issues among stakeholders.

3.2 Key Phases and Tasks:

Effective public consultation requires the successful completion of three phases and ten tasks:

Phase 1: Design - The terms of reference for the consultation shall be defined and a consultation plan designed. The plan includes:

- Task 1: Analyze situation.
- Task 2: Identify decision making process.
- Task 3: Create strategy.
- Task 4: Identify stakeholders.
- Task 5: Selection and schedule activities.

Phase 2: Consultation - This is the consultation phase of the public consultation process.

- Task 6: Inform public. Proper notice shall be given to stakeholders and the public. They should also receive background information so they can understand the decision(s) at stake.
- Task 7: Consult public. Through the activities identified in the plan, the public shall be consulted and all comments and participation shall be recorded.
- Task 8: Analyze input. The input gathered during the consultation activities shall be analyzed and compiled into a report.

Phase 3: Feedback. Consideration shall be made on how to report the results of the public consultation to the decision-maker in order to influence the final decision. As

well, the participants shall be informed of the final decision and how their participation influenced the decision.

Task 9: Influence decisions. The participation and input information shall be presented to the sponsor's decision-makers for consideration. In turn, the sponsor's decision-makers shall present the consultation information to the approval authority as part of their proposal.

Task 10: Feedback. The public requires feedback, from both the sponsor and the approval authority, on how their input influenced the decision.

4.0 Public Consultation Processes in Ministry Program Areas:

Public consultation processes may run parallel to the associated decision-making processes. The relevant programs and activities are presented here, by Ministry program area:

4.1 Program development:

- (a) major initiatives,
- (b) new and amended legislation,
- (c) new and amended regulations,
- (d) environmental standards,
- (e) ministry policy and guidelines, and
- (f) hazardous waste classification and review

4.2 Pollution control, abatement and prevention:

- (a) municipal pollution abatement,
- (b) industrial pollution abatement,
- (c) Control Orders,
- (d) pollution prevention,
- (e) environmental clean-ups,
- (f) emergency response, and
- (g) site decommissioning.

4.3 Environmental assessments and approvals:

- (a) class EAs,
- (b) waste management EAs,
- (c) municipal EAs, and
- (d) Certificates of Approval

4.4 Environmental master planning:

- (a) waste management planning,
- (b) land use planning,
- (c) toxics management planning, and
- (d) remedial action plans (RAPs).

Legislation, regulations or guidelines may establish a minimum standard for public notice. The extent of public consultation is usually at the discretion of the responsible Director.

5.0 Environmental Bill of Rights (EBR)

The EBR provides the public with more opportunities to participate in environmental decision-making and will give the public enhanced access to the courts.

The EBR establishes a procedure for notifying the public when environmentally significant decisions are proposed by prescribed government Ministries. The EBR does not duplicate existing public participation processes for environmentally significant decisions, but establishes the minimum level of public notice and consultation.

The EBR will not duplicate public participation processes. For example, the *Environmental Assessment Act (EA Act)* already has a public participation process in place which meets or exceeds the requirements of the EBR.

Electronic Registry:

The public will be able to access information through a computerized bulletin board of the prescribed ministries' proposals for policies, Acts, regulations and instruments.

The Registry is being developed to be accessible by modem from a home computer or a local public information centre.

The public may provide comments to a Ministry on proposals found in the Registry.

5.1 Statement of Environmental Values:

Each Ministry subject to EBR will create a draft Statement of Environmental Values stating how it will take the environment into account in its decision-making. There will be 14 ministries subject to some EBR provisions:

Agriculture and Food
Consumer and Commercial Relations
Culture, Tourism and Recreation
Economic Development and Trade

Environment and Energy
Finance
Health
Housing
Labour
Management Board
Municipal Affairs
Natural Resources
Northern Development and Mines
Transportation

5.2 Proposals for Acts, Regulations, Instruments

Public notice will be provided on the Registry of proposed Acts, regulations, instruments which are of environmental significance.

During the minimum 30-day notification period, the public may provide written comments on these proposals to the appropriate Ministry, which must consider and respond to these comments (other participation rights may also be provided by Ministries).

When a decision is made regarding the proposal, it is placed on the Registry.

5.3 Public Appeals:

Any resident can seek leave to appeal a decision to issue a Class I or II instrument within 15 days of its being placed on the Registry.

To seek leave to appeal:

- (a) a person must demonstrate that he or she has an interest in the decision (for example, that the person had commented while it was posted on the Registry or that he or she lives close to the site, etc.); and,
- (b) a person must demonstrate the decision is unreasonable, and that significant environmental damage would occur if the decision was not changed.

If the leave to appeal is granted, the instrument is 'stayed' (suspended) until the hearing of the board, unless the board orders otherwise.

6.0 Public Consultation Policy by Ministry Activity:

6.1 Comprehensive new programs and major revisions to existing ones covering broad areas of policy

The Ministry shall consult the public on proposed major program initiatives.

The consultation programs can involve a range of approaches, depending on the nature of the decision.

In the case of inter-jurisdictional initiatives, public consultation shall be covered by specific policies and agreements developed by the parties involved.

6.2 New and amended legislation

The procedures for tabling and considering bills by the Legislature include opportunities for public consultation. Normally the public is informed when a bill is tabled. The Ministry, with Cabinet approval, may get public input on specific legislative initiatives before the bills are introduced in the Legislature.

6.3 New and amended regulations

Generally, the Ministry provides an opportunity for the public to be informed about, and comments on, proposed regulations. In the case of draft regulations, the notification by the Ministry shall include:

- (a) a brief description of the regulation and its intent;
- (b) the source of copies of the draft regulation and background information; and
- (c) information on how the public can provide comments.

Once a regulation is made and filed with the Registrar of Regulations, the Ministry shall make it, and a summary of the public's comments, available in Ministry Head Office and Regional Public Reading Rooms and at all District Offices. All Regulations shall be published in the "Ontario Gazette" and available in public libraries throughout the province.

In some cases, the Ministry may consult the public on regulations at an earlier stage through consultation done on other programs (e.g., major program initiatives which require regulations). For regulations likely to interest the public, the Ministry may use additional consultation activities.

In most cases, the Ministry may not consult the public on regulations that are minor or administrative or when immediate action is required. The Ministry shall provide subsequent notification to the public through publication in the "Ontario Gazette" and other means.

Specifically, in the case of pesticide regulations, the Ontario Pesticides Advisory Committee (OPAC) shall review new products and make recommendations to the Minister on "interim status" classification each month. These approved interim classifications will be published in the "Ontario Gazette" and pesticide client groups shall be sent notices. Interim classifications shall be in effect up to 18 months. During this period, the public may comment. After this period, the interim classification shall be:

- (a) revoked
- (b) suspended
- (c) given further interim status, or
- (d) given full classification by regulation.

6.4 Environmental standards for contaminants to protect human health and the environment

The Ministry shall provide the public with an opportunity to contribute to the development of environmental standards for contaminants through the Advisory Committee on Environmental Standards (ACES). ACES is responsible for reviewing the scientific information, consulting with the public and considering other relevant information in making recommendations. The public shall be notified of ACES recommendations to the Ministry and of how their comments were considered. The Ministry has the option of directly consulting with the public.

The Ministry may set an interim standard without public consultation in cases the Ministry judges to be necessary. In these cases, the Ministry shall inform the public of the interim standard and consult the public through ACES as the final standard is developed.

6.5 Certificates of Approval and Permits

Information developed or received by the Ministry related to Certificate and Permit applications shall be available to the public for comment, except when there are legal constraints, such as imposed under the *Freedom of Information and Protection of Privacy Act*. There will be selective public consultation on applications for Certificates of Approval and Permits. Criteria will be established to identify the special circumstances when a public consultation program is required.

Public consultation shall, at a minimum, include notification and provide an opportunity for the public to submit written comments. Additional consultation activities may be performed as needed. Once the Ministry makes the final decision, all stakeholders shall be notified of the decision and how the public's input was considered.

6.6 Environmental Assessment

The Ministry actively encourages all sponsors of proposed undertakings to consult with all interested and potentially affected stakeholders in the development of the formal environmental assessment submission required under the *EA Act*, as specified in Guideline E-2: "Pre-submission Consultation in the Environmental Assessment Process".

When the Ministry prepares EAs or exemption requests for its own undertakings, public consultation shall be done using the Guideline E-2.

The Environmental Assessment Advisory Committee consults the public on designation and exemption requests and other matters as directed by the Minister.

6.7 Pollution Abatement Program

Guideline F-2: "Compliance" discusses the tools available to the Ministry to encourage, or require the correction of, current and potential environmental problems. The guideline also describes appropriate public consultation and notification and discusses factors Ministry staff shall consider when designing a public consultation program. These factors include the particular situation in need of abatement and the larger community environment.

In cases where a program approval or a legally enforceable abatement tool (e.g., Control Order) is used, the Ministry shall notify the public by giving copies of the document to:

- (a) the clerks of the local municipality,
- (b) the upper tier municipality, and
- (c) the appropriate Member of Provincial Parliament (MPP).

The Director may also notify the public by other means.

6.8 Site decommissioning and abandoned sites

When the Ministry assumes the lead role in the decommissioning of a site or clean-up of an abandoned site, the Ministry shall inform the affected public of its activities on an ongoing basis and ask for public comment on issues with significant environmental or public impact consistent with Ministry guidelines.

The Ministry actively encourages other sponsors of site decommissioning/abandoned site projects to inform and consult with the public as specified in its Guideline C-15: "Decommissioning and Clean-up of Sites" (under revision).

Guidelines and procedures the Ministry uses to fulfil its mandate:

The Ministry shall provide public access to its "Manual of Guidelines and Procedures" and other Ministry guidelines. These documents shall be available at the Ministry Head Office and Regional Reading Rooms and at all District Offices.

Guidelines likely to interest the public shall be adopted and implemented on an interim basis for six months. During this period, the public shall be notified and invited to comment in writing. Copies of the interim guidelines shall be available to anyone on request.

Emergency activities by the Ministry to protect life, property and the environment:

Along with its responsibilities in responding to emergencies and spills, as defined in G-1, the Ministry shall ensure that the public is notified of emergencies and moderate and major spills as soon as possible. The manner and form of notification in each case shall be determined by:

- (a) the size and nature of the emergency or spill,
- (b) the risk to the affected public, and
- (c) the action required to deal with the emergency or spill.

When the Ministry is involved in ongoing remedial activities following an emergency or spill, the Ministry shall ensure that the public is notified of these activities and may ask the public for input.